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Investigation by the Department of Telecommunications	)	
and Energy on its own Motion into the Appropriate	)	
Regulatory Plan to succeed Price Cap Regulation for	)	
Verizon New England, Inc. d/b/a Verizon Massachusetts'	)	D.T.E. 01-31-Phase I
intrastate retail telecommunications services in	)	
the Commonwealth of Massachusetts	)	
	)	

HEARING OFFICER RULING ON VERIZON MASSACHUSETTS'  
MOTIONS FOR CONFIDENTIAL TREATMENT

On July 5, 2001, the Attorney General issued his First Set of Information Requests to Verizon Massachusetts (“VZ-MA”). On July 16 and 25, 2001, VZ-MA filed with the Department of Telecommunications and Energy (“Department”) its responses to the Attorney General’s First Set of Information Requests. Also on July 25, 2001, VZ-MA filed a Motion for Confidential Treatment (“First Motion”) for portions of its responses to five of the Attorney General’s information requests, AG-VZ-1-8 (errata reply), 1-11, 1-13, 1-14, and 1-17. The Attorney General issued his Second Set of Information Requests on July 27, 2001. On August 6 and 8, 2001, VZ-MA filed its responses to the Attorney General’s Second Set of Information Requests. On August 15, 2001, VZ-MA filed a Motion for Confidential Treatment (“Second Motion”) of portions of its responses to two information requests from the Attorney General’s second set of requests, AG-VZ-2-10 and 2-18. No party filed an objection to either of VZ-MA’s motions.

Information filed with the Department may be protected from public disclosure pursuant to G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the

Department shall protect only so much of the information as is necessary to meet such need.

G.L. c. 25, § 5D permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data, regardless of physical form or characteristics, received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review. See G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth. Specifically, G.L. c. 25, § 5D, is an exemption recognized by G.L. c. 4, § 7, cl. twenty-sixth (a) (“specifically or by necessary implication exempted from disclosure by statute”).

G.L. c. 25, § 5D establishes a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute “trade secrets, confidential, competitively sensitive or other proprietary information”; second, the party seeking protection must overcome the G.L. c. 66, § 10, statutory presumption that all such information is public information by “proving” the need for its non-disclosure; and third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect. See G.L. c. 25, § 5D.

Previous Department applications of the standard set forth in G.L. c. 25, § 5D reflect the narrow scope of this exemption. See Boston Edison Company: Private Fuel Storage Limited Liability Corporation, D.P.U. 96-113 at 4, Hearing Officer Ruling (March 18, 1997) (exemption denied with respect to the terms and conditions of the requesting party’s Limited Liability Company Agreement, notwithstanding requesting party’s assertion that such terms were competitively sensitive); see also Standard of Review for Electric Contracts, D.P.U. 96-39 at 2, Letter Order (August 30, 1996) (Department will grant exemption for electricity contract prices, but “[p]roponents will face a more difficult task of overcoming the statutory presumption against the disclosure of other [contract] terms, such as the identity of the customer”); Colonial Gas Company, D.P.U. 96-18 at 4 (1996) (all requests for exemption of terms and conditions of gas supply contracts from public disclosure denied, except for those terms pertaining to pricing).

All parties are reminded that requests for protective treatment have not been and will not be granted automatically by the Department. A party’s willingness to enter into a non-disclosure agreement does not resolve the question of whether the response should be granted protective treatment. Boston Electric Company, D.T.E. 97-95, Interlocutory Order on (1) Motion for Order on Burden of Proof, (2) Proposed Nondisclosure Agreement, and (3) Requests for Protective Treatment (July 2, 1998).

### III. VZ-MA'S POSITION

In its First Motion, VZ-MA contends that AG-VZ-1-8 requests information which consists of third-party specific data (First Motion at 3). Specifically, VZ-MA contends that the attachment to AG-VZ-1-8 identifies the number of wholesale services, grouped by area code, that RCN has purchased from VZ-MA, and information related to RCN's licensing of poles and conduits (*id.*). VZ-MA asserts that this information is confidential and proprietary information of RCN, and VZ-MA may not disclose this information without RCN's authorization (*id.*). Further, VZ-MA asserts that the attachment to AG-VZ-1-11 provides product information on specific VZ-MA retail and wholesale services, namely Flexpath T1, intraLATA special access, and UNE T1 services/facilities (*id.* at 3-4). VZ-MA contends that disclosure of this detailed information could allow competitors to focus competitive resources and to solicit customers with competing claims of quality assurance (*id.* at 4). In addition, VZ-MA's asserts that its responses to AG-VZ-1-13 and 1-14 contain confidential information regarding VZ-MA's operating revenues, expenses, taxes, investments, and service-specific revenues for each year from 1993 through 2000 (*id.*). Such information, asserts VZ-MA, could be used by competitors in determining investment and sales strategies in Massachusetts (*id.*). Finally, VZ-MA contends that the attachment to AG-VZ-1-17 identifies new products and services that VZ-MA plans to introduce through 2003 (*id.* at 4). VZ-MA asserts that such information must not be disclosed in order to prevent premature product announcements and to ensure that competitors do not have an inappropriate opportunity to respond in an unfair, anticipatory fashion to product rollouts (*id.* at 4-5).

In its Second Motion, VZ-MA argues that the attachment to AG-VZ-2-10 identifies VZ-MA's wire centers and the number of lines served by each wire center (Second Motion at 3). Competitors could use this information, argues VZ-MA, to establish sales strategies and to target particular exchanges (*id.*). The attachment to AG-VZ-2-18 identifies data concerning VZ-MA's residential resold lines by class of service (*id.*). VZ-MA argues that this attachment is confidential because competitors could use this information to target particular market segments (*id.* at 4).

In both motions, VZ-MA argues that the information for which it seeks protective treatment is not shared with non-VZ-MA employees for their personal use, and that any dissemination to non-employees is labeled proprietary (First Motion at 5; Second Motion at 4). VZ-MA further argues that VZ-MA employees and agents using this information are subject to non-disclosure agreements and that the data are transferred internally over a protected network and marked proprietary (First Motion at 5; Second Motion at 4). VZ-MA asserts that VZ-MA marketing personnel are not given access to the information for the purpose of competing against other providers (Second Motion at 4-5). VZ-MA contends that competitors can use the information to develop their own competitive offerings and identify which VZ-MA customers, exchanges, and services to "target" (First Motion at 5; Second Motion at 5). Lastly, VZ-MA

argues that other companies are not subject to the same level of scrutiny to which disclosure of such information would expose VZ-MA (First Motion at 6; Second Motion at 6).

#### IV. ANALYSIS AND FINDINGS

I agree with VZ-MA that its response to AG-VZ-1-8 involves third-party specific data which could jeopardize the competitive position of a service provider who is not a party to this proceeding. Unless RCN waives protection and grants VZ-MA permission to publicly disclose this information, I grant VZ-MA's Motion to treat the materials submitted attached to AG-VZ-1-8 as confidential, proprietary materials. In addition, I agree that disclosure of the attachment to AG-VZ-1-11 could provide competitors with the ability to solicit VZ-MA's customers of the referenced services with targeted marketing offers related to distinct areas of service quality. Therefore, I grant VZ-MA's motion with regard to its response to AG-VZ-1-11. Further, both VZ-MA's responses to AG-VZ-1-13 and 1-14 contain detailed financial information including VZ-MA's levels of investment, operating revenues, earnings return, and service-specific revenues over time. I agree that disclosure of this information could assist VZ-MA's competitors in development of sales and investment strategies; therefore, I grant VZ-MA's motion for protective treatment of its responses to AG-VZ-1-13 and 1-14. Further, I agree that VZ-MA's response to AG-VZ-1-17, which concerns new products and services that VZ-MA plans to offer through 2003, is confidential, proprietary information. Public disclosure of this information could thwart the further development of new and innovative product offerings.

In conformance with the recently issued Interlocutory Order on Appeal of Hearing Officer Ruling, D.T.E. 01-31 (August 29, 2001), VZ-MA's request for protective treatment of its response to AG-VZ-2-10 is denied, except as to the following. VZ-MA is directed to file with the Department a public version of its response to AG-VZ-2-10 with only the wire center identification redacted. I find that redaction of the wire center identification in the public version of VZ-MA's response to this information request will be sufficient to prevent the anti-competitive "targeting" that VZ-MA argues against in its Second Motion. See id. at 9-10. Lastly, I agree that VZ-MA's response to AG-VZ-2-18 contains service-specific commercial data that is confidential, proprietary information.

#### V. RULING

VZ-MA's motions are granted in part and denied in part. Portions of the following responses will be protected from public disclosure under G.L. c. 25, § 5D, as requested by VZ-MA: AG-VZ-1-8, 1-11, 1-13, 1-14, 1-17, and 2-18. VZ-MA is required to resubmit its response to AG-VZ-2-10 in conformance with the above directives.

Under the provisions of 220 C.M.R. § 1.06(6)(d)(3), any party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within five (5) days of this Ruling. Any appeal must include a copy of this Ruling.

Date: August 29, 2001

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Paula Foley, Hearing Officer